

SENATE FILE 2107
BY KIBBIE

A BILL FOR

1 An Act relating to motor fuel by establishing standards for
2 the sale of such fuel, eliminating tax credits, and making
3 penalties applicable.
4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 214A.1, Code 2009, is amended by adding
2 the following new subsection:

3 NEW SUBSECTION. 23A. "*Unblended gasoline*" means gasoline
4 other than any of the following:

5 a. Standard ethanol blended gasoline.

6 b. E-85 gasoline.

7 Sec. 2. Section 214A.2, subsection 3, paragraph b,
8 subparagraph (4), Code Supplement 2009, is amended by striking
9 the subparagraph and inserting in lieu thereof the following:

10 (4) (a) For standard ethanol blended gasoline, it must be
11 classified as a type of ethanol blended gasoline that meets all
12 of the following requirements:

13 (i) It contains the highest volume of ethanol authorized by
14 the United States environmental protection agency.

15 (ii) It meets the requirements for ethanol blended gasoline
16 as provided in this section.

17 (b) The department shall publish a new classification for
18 standard ethanol blended gasoline in the Iowa administrative
19 bulletin as provided in section 17A.6 as soon as practicable.
20 The new classification shall designate the volume percent
21 of ethanol in the ethanol blended gasoline according to
22 its designation as provided in this section. The new
23 classification for standard ethanol blended gasoline shall
24 take effect not earlier than sixty days after the date of
25 publication. The secretary shall notify the Iowa Code editor
26 by letter of the new classification.

27 (c) (i) Notwithstanding subparagraph division (b),
28 the classification for standard ethanol blended gasoline is
29 E-9 or E-10, until the date that a new classification for
30 standard ethanol blended gasoline is first published in the
31 Iowa administrative bulletin as provided in that subparagraph
32 division.

33 (ii) This subparagraph division (c) is repealed on the date
34 that the first new classification for standard ethanol blended
35 gasoline is first published in the Iowa administrative bulletin

1 as provided in subparagraph division (b).

2 Sec. 3. NEW SECTION. 214A.2C Gasoline advertised, sold, or
3 dispensed by a retail dealer — ethanol blend requirement and
4 exceptions — applicability.

5 1. Except as otherwise provided in this section, a retail
6 dealer shall not advertise, sell, or dispense unblended
7 gasoline in this state.

8 2. A retail dealer may advertise, sell, or dispense
9 unblended gasoline in this state if all of the following apply:

10 a. The unblended gasoline is used to operate a motor which
11 powers a qualified motor vehicle which is any one of the
12 following:

13 (1) An aircraft as defined in section 328.1.

14 (2) A motor vehicle used exclusively for motor sports,
15 including on a raceway, if the motor vehicle cannot operate on
16 a highway as provided in chapter 321 or rules adopted by the
17 state department of transportation.

18 (3) An antique vehicle registered under section 321.115.

19 (4) A snowmobile as defined in section 321G.1.

20 (5) An all-terrain vehicle as defined in section 321I.1.

21 (6) A watercraft as defined in section 462A.2.

22 (7) A lawnmower or other implement powered by a small motor.

23 b. The retail dealer does not use more than one metered
24 pump located at a retail motor fuel site to advertise, sell,
25 or dispense unblended gasoline.

26 3. A retail dealer may advertise, sell, or dispense
27 unblended gasoline at a retail motor fuel site owned or
28 operated by the retail dealer pursuant to a waiver issued by
29 the department to the retail dealer.

30 a. The department shall only issue a waiver to a retail
31 dealer after approving an application submitted to the
32 department by the retail dealer in a manner and according
33 to procedures required by the department which application
34 demonstrates that the retail dealer is not able to reasonably
35 obtain ethanol blended gasoline for sale at the retail motor

1 fuel site.

2 *b.* A waiver issued under this subsection expires six months
3 from the date of issuance. However, a retail dealer who has
4 been issued a waiver may apply for and be issued any number of
5 subsequent waivers.

6 4. *a.* A retail dealer may advertise, sell, or dispense
7 unblended gasoline at a retail motor fuel site owned or
8 operated by the retail dealer without restriction as otherwise
9 provided in this section until January 1, 2011.

10 *b.* This subsection is repealed on January 1, 2011.

11 Sec. 4. Section 214A.3, Code Supplement 2009, is amended by
12 adding the following new subsection:

13 NEW SUBSECTION. 3. A retail dealer who advertises the sale
14 of gasoline that is not ethanol blended gasoline shall refer to
15 the gasoline as unblended gasoline.

16 Sec. 5. Section 214A.16, Code Supplement 2009, is amended
17 to read as follows:

18 **214A.16 Notice of renewable biodiesel fuel or unblended**
19 **gasoline — decal.**

20 1. *a.* ~~If ethanol blended gasoline is sold from a motor fuel~~
21 ~~pump~~ a motor fuel pump dispenses unblended gasoline, the motor
22 fuel pump shall have affixed a decal identifying the ~~ethanol~~
23 ~~blended gasoline~~ motor fuel as unblended gasoline. If the
24 motor fuel pump dispenses ethanol blended gasoline classified
25 as higher than standard ethanol blended gasoline pursuant
26 to section 214A.2, the decal shall ~~contain the following~~
27 ~~notice: "FOR FLEXIBLE FUEL VEHICLES ONLY"~~ identify the ethanol
28 blended gasoline as for flexible fuel vehicles only.

29 *b.* If biodiesel fuel is sold from a motor fuel pump, the
30 motor fuel pump shall have affixed a decal identifying the
31 biodiesel fuel as provided in 16 C.F.R. pt. 306.

32 2. The design and location of the decal shall be prescribed
33 by rules adopted by the department. A decal identifying a
34 renewable biodiesel fuel shall be consistent with standards
35 adopted pursuant to section 159A.6. The department may approve

1 an application to place a decal in a special location on a pump
2 or container or use a decal with special lettering or colors,
3 if the decal appears clear and conspicuous to the consumer.
4 The application shall be made in writing pursuant to procedures
5 adopted by the department.

6 Sec. 6. Section 422.11N, subsection 9, Code 2009, is amended
7 to read as follows:

8 9. This section is repealed on January 1, ~~2021~~ 2011.

9 Sec. 7. Section 422.11O, subsection 5, Code 2009, is amended
10 by striking the subsection.

11 Sec. 8. Section 422.33, subsection 11A, paragraph c, Code
12 Supplement 2009, is amended to read as follows:

13 c. This subsection is repealed on January 1, ~~2021~~ 2011.

14 Sec. 9. 2006 Iowa Acts, chapter 1142, section 49, subsection
15 2, as amended by 2006 Iowa Acts, chapter 1175, section 17, is
16 amended to read as follows:

17 2. For a retail dealer who may claim an ethanol promotion
18 tax credit under section 422.11N or 422.33, subsection 11A,
19 as enacted in this Act, in calendar year ~~2020~~ 2010 and whose
20 tax year ends ~~prior to~~ after December 31, ~~2020~~ 2010, the
21 retail dealer may ~~continue to~~ claim the tax credit in only for
22 that part of the retail dealer's following tax year ending
23 on December 31, 2010. ~~In that case, the tax credit shall be~~
24 ~~calculated in the same manner as provided in section 422.11N~~
25 ~~or 422.33, subsection 11A, as enacted in this Act, for the~~
26 ~~remaining period beginning on the first day of the retail~~
27 ~~dealer's new tax year until December 31, 2020. For that~~
28 ~~remaining period, the tax credit shall be calculated in the~~
29 ~~same manner as a retail dealer whose tax year began on the~~
30 ~~previous January 1 and who is calculating the tax credit on~~
31 ~~December 31, 2020.~~

32 EXPLANATION

33 REGULATION OF ETHANOL BLENDED GASOLINE. This bill amends
34 Code chapter 214A, which provides authority to the department
35 of agriculture and land stewardship (department) to regulate

1 the sale of motor fuel, including renewable fuel such as
2 ethanol blended gasoline. Code section 214A.2 provides for
3 different types of gasoline and establishes standards or
4 specifications for gasoline in conformance with federal law
5 and specifically regulations promulgated by the United States
6 environmental protection agency (EPA), and in part based on
7 standards published by the American society for testing and
8 materials (A.S.T.M.) international. The Code section provides
9 that standard ethanol blended gasoline is classified by its
10 percent volume of ethanol, referred to as "E-xx" where "xx"
11 designates the percentage (e.g., E-10).

12 INCREASING THE PERCENTAGE OF ETHANOL IN STANDARD ETHANOL
13 BLENDED GASOLINE. The bill increases the ethanol percentage
14 required to be blended in standard ethanol blended gasoline.
15 Currently, standard ethanol blended gasoline used to power
16 vehicles other than flexible fuel vehicles is classified as E-9
17 or E-10 in conformance with EPA regulations. The bill provides
18 that if the EPA allows a higher percentage (e.g., E-15), the
19 department must change the classification of standard ethanol
20 blended gasoline to conform with the higher percentage, so
21 long as the gasoline complies with other state specifications
22 including A.S.T.M. international requirements. The department
23 must publish the new classification in the Iowa administrative
24 bulletin and it takes effect 60 days later. Until that time,
25 the current E-9 or E-10 classification applies.

26 ETHANOL BLENDED GASOLINE REQUIREMENT. The bill creates a
27 new requirement that a retail dealer cannot advertise, sell, or
28 dispense gasoline other than ethanol blended gasoline; either
29 standard ethanol blended gasoline or so-called E-85 gasoline.
30 Gasoline which does not contain the requisite percentage of
31 ethanol is referred to as "unblended gasoline".

32 EXCEPTIONS. Notwithstanding the prohibition, the bill
33 allows a retail dealer to continue to advertise, sell, or
34 dispense unblended gasoline in limited circumstances. First,
35 the prohibition does not apply to gasoline used to operate

1 aircraft, or motor vehicles involved exclusively in motor
2 sports events. The requirement also does not apply to
3 gasoline for use in certain vehicles such as antique vehicles,
4 snowmobiles, all-terrain vehicles, watercraft, and small
5 motors. The bill prohibits a retail dealer from using more
6 than one metered pump to dispense unblended gasoline. Second,
7 the prohibition does not apply to a retail dealer who has been
8 issued a waiver by the department because the retail dealer has
9 not been able to reasonably obtain ethanol blended gasoline for
10 sale at the retail motor fuel site. The waiver expires six
11 months from the date of issuance. However, a retail dealer who
12 has been issued a waiver may apply for any number of subsequent
13 waivers. Third, a retail dealer may continue to advertise,
14 sell, or dispense unblended gasoline from one or more metered
15 pumps located at a retail motor fuel site until January 1,
16 2011.

17 ADVERTISING. The bill provides that a retail dealer must
18 affix a decal on each metered pump which dispenses unblended
19 gasoline, notifying the public of its designation and any
20 restricted use. The bill eliminates a requirement that a
21 metered pump dispensing ethanol blended gasoline be affixed
22 with a decal.

23 APPLICABLE PENALTIES. Code section 214A.11 provides that
24 a person who violates a provision of Code chapter 214A is
25 guilty of a serious misdemeanor, and that each day that a
26 continuing violation occurs is considered a separate offense.
27 A serious misdemeanor is punishable by confinement for no
28 more than one year and a fine of at least \$315 but not more
29 than \$1,875. The Code section also provides that in lieu of
30 seeking a prosecution, the state may proceed against the person
31 by initiating an alternative civil enforcement action as a
32 contested case proceeding by the department under Code chapter
33 17A or as a civil judicial proceeding by the attorney general
34 upon referral by the department. The applicable civil penalty
35 is at least \$100 but not more than \$1,000 for each violation.

1 Each day that a continuing violation occurs shall be considered
2 a separate offense.

3 ELIMINATION OF TAX CREDITS. During the 2006 Legislative
4 Session, the general assembly enacted H.F. 2754 (2006 Iowa
5 Acts, chapter 1142) creating two new tax credits: (1) the
6 ethanol promotion tax credit, and (2) the E-85 gasoline
7 promotion tax credit. That statute in addition to subsequent
8 enactments provides for the terms of the tax credits which may
9 be claimed by retail dealers. The ethanol promotion tax credit
10 expires on December 31, 2010 (see 2006 Iowa Acts, chapter
11 1175), but provides an extension for persons who have tax
12 years beginning after January 1. The bill eliminates the tax
13 credit on January 1, 2011, when the new sales requirement takes
14 effect, and does not allow the extension period for retail
15 dealers whose fiscal year does not begin on January 1. The
16 bill also eliminates a provision affecting the E-85 gasoline
17 promotion tax credit which allows a retail dealer to claim both
18 tax credits based on the same ethanol gallonage.